



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930

June 18, 2004

SMALL ENTITY COMPLIANCE GUIDE

Dear Permit Holder:

This letter is to notify you that the regulations implementing Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 10) will be published **June 23, 2004**. This letter summarizes the new management measures established by Amendment 10, but this summary is not a substitute for the actual regulations. The full text of the regulations is available on our website: www.nero.nmfs.gov, or you may request a copy by mail by calling 978-281-9315.

AREA ROTATION PROGRAM

Amendment 10 establishes an area-based management program that defines four types of fishing areas under the FMP:

- (1) **Sea Scallop Access Areas (Access Areas)**, within which specific management measures are established to achieve area-specific harvest targets;
- (2) **Rotational Closed Areas**, which are closed to scallop fishing for a specified period of time to achieve area-specific scallop resource objectives;
- (3) **Essential Fish Habitat (EFH) Closed Areas**, which are closed to scallop fishing to minimize adverse effects on EFH due to scallop fishing activities; and
- (4) **Open Areas**, which are the areas that do not fall under any of the previously defined types. However, other FMPs may restrict scallop fishing activities in specific areas. For example, the Northeast Multispecies FMP currently prohibits the use of scallop gear within the year-round groundfish closed areas (Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Western Gulf of Maine Closed Area, and Cashes Ledge Closed Area).

Access Areas and Rotational Closed Areas will be modified and designated, and management measures within the Access Areas will be modified, in future actions as part of the Area Rotation Program established by Amendment 10. Rotational Closed Areas will be designated based on the presence of small scallops and Access Areas will be designated in areas where small scallops have grown to a size that will promote optimum harvest levels. The Council will modify Access Areas and Rotational Closed Areas through the framework process.

OPEN AREA MANAGEMENT MEASURES

Open Area Days-At-Sea (DAS) Allocations - Effective **June 23, 2004**

The DAS allocated to limited access scallop vessels for use when fishing in open areas are as specified below. Note that the allocation below for Fishing Year 2004 revises the allocation previously specified in emergency regulations that became effective on March 1, 2004.



| Limited Access Scallop Permit Category | Fishing Year 2004 (revised) | Fishing Year 2005 | Fishing Year 2006 |
|--|-----------------------------|-------------------|-------------------|
| Full-Time | 42 | 117 | 152 |
| Part-Time | 17 | 47 | 61 |
| Occasional | 4 | 10 | 13 |

On September 15, 2004, DAS allocations for Fishing Year 2004 will increase according to the chart below, unless a final rule is published by that date to allow access by scallop vessels to portions of the Northeast multispecies closed areas on Georges Bank and in southern New England. The New England Fishery Management Council proposed an access program in Sea Scallop Framework 16/Multispecies Framework 39, which is currently under review. **If the DAS adjustment shown below becomes effective, you will receive further notification.**

| Limited Access Scallop Permit Category | Increase to 2004 DAS Allocation | Total Open Area DAS |
|--|---------------------------------|---------------------|
| Full-Time | 20 | 62 |
| Part-Time | 8 | 25 |
| Occasional | 5 | 9 |

Open Area Trip Notification Requirements – Effective **July 23, 2004**

- ◆ For the purpose of randomly selecting vessels to carry an observer, a limited access vessel must submit a report through the VMS e-mail messaging system (**NEC.Observers@noaa.gov**) of its intention to begin an open area trip **72 hours** prior to the date it intends to depart. For each of these reports, vessels must submit the following information: Vessel name and permit number, owner and operator's names, owner and operator's phone numbers, date and time of departure, and port of departure.
- ◆ A vessel that does not have a valid U.S. Coast Guard Inspection Sticker is deemed inadequate or unsafe for purposes of carrying a NOAA Fisheries observer. Any vessel that has been chosen to carry an observer may be prohibited from participating in the DAS Program until the vessel is inspected by the Coast Guard and receives an inspection sticker.

Cost to Vessels Carrying an Observer on Open Area Trips – Effective **July 23, 2004**

Scallop vessels are responsible for paying for the cost of observers in open areas. Vessels selected to carry an observer are required to pay **\$719.12** for each day that the observer is onboard the vessel **for 6 hours or more**. The increase in the cost per day for observer coverage from last year's program reflects changes in the contract for observer coverage.

Bank or cashier checks for the cost of the observer must be made out to A.I.S., Incorporated, and must be received within 1 week of the date the scallops are landed, unless the vessel receives other instructions in writing from NOAA Fisheries. Mail your check, along with a note containing the following information: "Sea Scallop Observer Fund," vessel name, permit number, owner or operator name, time and date of departure, and time and date of return, to:

**A.I.S., Incorporated
Attn: Arvidas Poshkus
P.O. Box 2093
New Bedford, MA 02741-2093**

Compensation for Carrying an Observer on Open Area Trips – Effective July 23, 2004

One percent (1%) of the total available DAS will be set aside and distributed to participating vessels to compensate for the cost of carrying observers. The total DAS available under this set-aside are 107 for fishing year 2004 and 304 for fishing year 2005.

Under this program, a vessel carrying an observer on an open area trip will be charged 0.86 DAS, instead of 1 full DAS, for each DAS used during the trip. For example, a vessel that carries an observer for a 10-DAS trip will only be charged 8.6 DAS instead of the usual 10 DAS. This will occur on a real-time basis, so there will be no need to make an adjustment to the vessel's DAS after the trip is completed. Once NOAA Fisheries receives confirmation that an observer has been assigned to a vessel and the vessel begins the DAS trip with the observer onboard, the DAS clock will run at the reduced rate.

The difference between the DAS charged to the vessel and actual DAS fished will be deducted from the pool of DAS set-aside. Therefore, using the example above, a vessel that carries an observer for a 10-DAS trip will be charged 8.6 DAS. The balance of this 10 DAS trip, 1.4 DAS, will be deducted from the total DAS set-aside.

Example activity chart

| | Monday | Tuesday | Wednesday | Thursday | Friday | Totals |
|---|--------------------------|----------|-----------|----------|-------------------------|--------------------|
| Activity | DAS clock starts 7:00 PM | Fishing | Fishing | Fishing | DAS clock stops 5:00 AM | - |
| Payment required from vessel | * | \$719.12 | \$719.12 | \$719.12 | * | \$ 2,157.36 |
| COMPENSATION –DAS charge at reduced (0.86) accrual rate | 0.18 | 0.86 | 0.86 | 0.86 | 0.18 | 2.94 |

* No payment is required from the vessel because the observer was onboard less than 6 hours on Monday and on Friday. If the observer was onboard for 6 hours or more, (i.e. the trip began at 6:00 PM on Monday), an additional payment of \$719.12 would be required.

DREDGE GEAR RESTRICTIONS

All vessels issued Federal sea scallop permits and fishing with scallop dredge gear must comply with the following restrictions, except vessels issued scallop permits that possess 400 lb or less of scallops and are fishing with hydraulic clam or mahogany quahog dredges.

Twine Top Minimum Mesh Size – Effective July 23, 2004

The current regulations require limited access vessels declared into the Hudson Canyon Access Area Program to use dredge gear in which the net material on the top of the dredge (twine top)

is at least 10 inches, square or diamond mesh, inside measurement. This requirement is extended by Amendment 10 to apply to all vessels using scallop dredge gear, both in the Hudson Canyon Area and in open areas. Vessels may not have twine tops with less than 10-inch mesh onboard. The requirement applies to any trip that begins on or after July 23, 2004.

Minimum Ring Size in Hudson Canyon Access Area – Effective July 23, 2004

The minimum size of the metal rings used to construct the chain bag in scallop dredge gear is increased from 3.5 inches to **4.0 inches** in diameter. All scallop dredges onboard vessels fishing within the Hudson Canyon Access Area must comply with this requirement by July 23, 2004. This requirement applies to any trip that begins on or after July 23, 2004.

Minimum Ring Size in Open Areas – Effective December 23, 2004

Any scallop dredge used or possessed by any vessel must be constructed with rings with a minimum diameter of **4.0 inches**. This requirement applies to any trip that begins on or after December 23, 2004.

SEA SCALLOP ACCESS AREA PROGRAM - Effective June 23, 2004 Unless Otherwise Noted

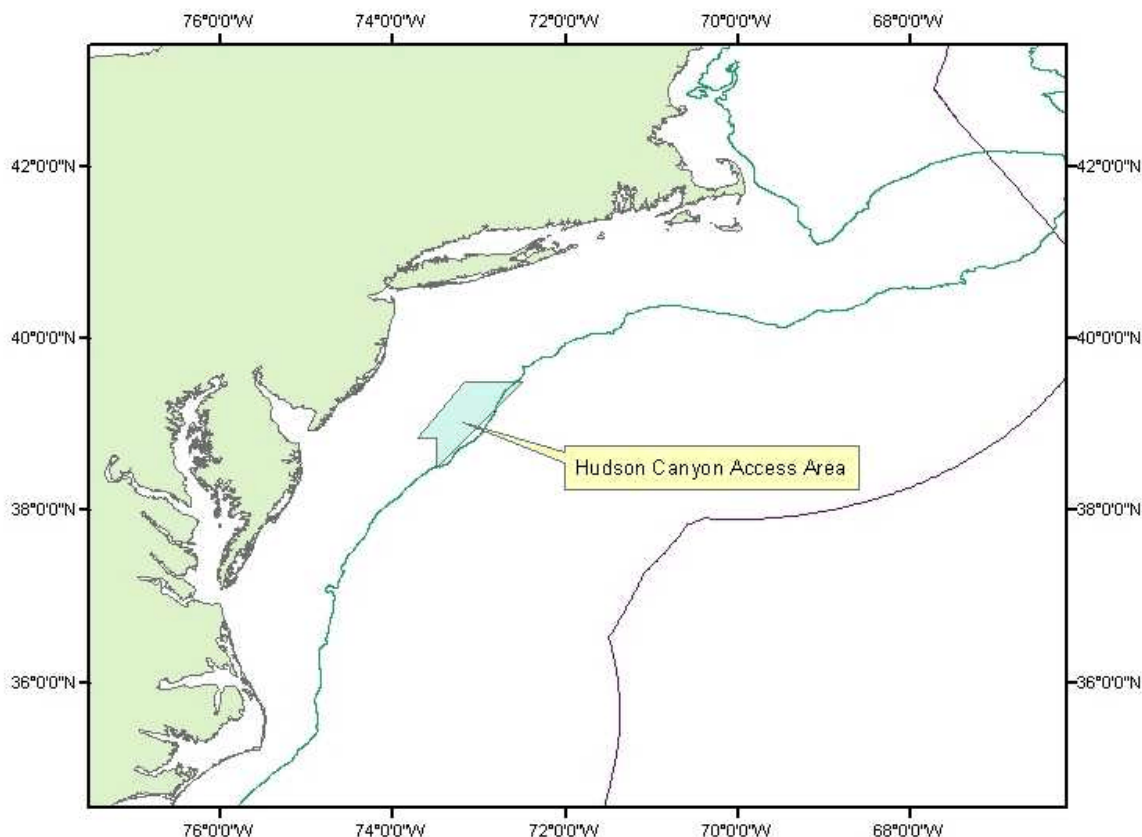
Amendment 10 establishes only one Access Area, by maintaining the Hudson Canyon Access Area with a slight modification. In the future, if other Access Areas are specified, vessel owners will be allowed to trade trips for these areas on a one-to-one basis. Additional information about the trading provision will be provided if other Access Areas are established.

Vessels with a limited access scallop permit that have declared out of the DAS program, or that have used up their scallop DAS allocations, and vessels issued a general category scallop permit may fish in Access Areas, provided they comply with the daily possession/landing limit of 400 lb shucked or 50 bushels of unshucked scallops.

Modification to Hudson Canyon Sea Scallop Access Area – Effective July 23, 2004

Amendment 10 modifies the boundary of the Hudson Canyon Access Area implemented by emergency action on March 1, 2004, to reflect that the southwest corner of the previous Hudson Canyon Access Area is within the new Mid-Atlantic (Elephant Trunk) Closed Area (described below). The modified coordinates are:

| Point | Latitude | Longitude |
|--------|----------------------|-------------------------|
| H1 | 39 30 ' N | 73 10 ' W |
| H2 | 39 30 ' N | 72 30 ' W |
| H3 | 38 30 ' N | 73 30 ' W |
| H4/ET4 | 38 50 ' N | 73 30 ' W |
| H5 | 38 50 ' N | 73 42 '02" W |
| H1 | 39 30 ' N | 73 10 ' W |



Sea Scallop Access Area Trip Allocation and DAS Charges

Amendment 10 maintains the Hudson Canyon Access Area trip allocations that were established for fishing year 2004 through an emergency action on March 1, 2004, and establishes the Hudson Canyon Access Area allocations for fishing year 2005, as shown in the chart below. Vessels will be charged 12 DAS for each trip into the area, regardless of how many days are fished. Vessels may fish more or less than 12 days.

| Limited Access Scallop Permit Category | Fishing Year 2004 | | Fishing Year 2005 | |
|--|-------------------|----------|-------------------|----------|
| | Trips | DAS/Trip | Trips | DAS/Trip |
| Full-Time | 4 | 12 | 3 | 12 |
| Part-Time | 1 | 12 | 1 | 12 |
| Occasional | 1 | 12 | 1 | 12 |

Sea Scallop Access Area Possession Limits

For each trip into the Hudson Canyon Access Area, limited access vessels may not land more than **18,000 lbs** of sea scallops, meat weight, unless the vessel is carrying a NOAA Fisheries observer.

Sea Scallop Access Area Trip Notification Requirements

All participating vessels must have installed on board an operational VMS unit.

Failure to comply with all of the following notification requirements disqualifies vessels from participating in the Hudson Canyon Access Area Program. NOAA Fisheries recommends a thorough review of the following requirements:

- ◆ A vessel issued a valid limited access scallop permit and planning to fish in the Access Area Program must submit a report through the VMS e-mail messaging system (**NEC.Observers@noaa.gov**) of its intention to fish in the Hudson Canyon Access Area prior to the 25th of the month before the month in which the anticipated trip(s) are to be taken. The report must include the following information: Vessel name and permit number, owner and operator's names, owner and operator's phone numbers, and number of trips the vessel intends to fish.
- ◆ In addition to the above advance notice for accessing the Hudson Canyon Access Area, for the purpose of randomly selecting vessels to carry an observer, a vessel must also submit a report through the VMS e-mail messaging system (**NEC.Observers@noaa.gov**) of its intention to fish in the Access Area Program **72 hours** prior to the date it intends to depart on each trip into a Access Area. For each of these reports, vessels must submit the following information: Vessel name and permit number, owner and operator's names, owner and operator's phone numbers, date and time of departure, and port of departure.
- ◆ A vessel that does not have a valid U.S. Coast Guard Inspection Sticker is deemed inadequate or unsafe for purposes of carrying a NOAA Fisheries observer. Any vessel that has been chosen to carry an observer may be prohibited from participating in the Access Area Program until the vessel is inspected by the Coast Guard and receives an inspection sticker.
- ◆ On the day that the vessel leaves port to fish under the Access Area Program, the vessel owner or operator must declare the vessel into the Access Area Program through the VMS prior to leaving port.

Instructions for declaring into the Access Area Program through VMS are available from the Northeast Regional Office of NOAA Fisheries upon request.

Cost to Vessels Carrying an Observer into an Access Area

Scallop vessels are also responsible for paying for the cost of observers in Access Areas. See the Cost to Vessels Carrying an Observer on Open Area Trips section of this letter (p. 2).

Compensation to Vessels for Carrying an Observer into an Access Area

In order to compensate limited access vessels that carry an observer into an Access Area, the vessel may land an additional **400 lb** of sea scallop meats for each DAS or part thereof that the vessel fishes with an observer onboard. This additional poundage is allocated in addition to the Access Area possession limit. For example, a vessel that takes a 10-day trip into the Hudson Canyon Access Area carrying an observer may land 22,000 lb of shucked scallops (18,000 lb + (400 lb x 10 days) = 22,000 lb). The total set-aside for the 2004 and 2005 Hudson Canyon Access Area are 187,900 lb and 149,562 lb respectively.

Vessels are only compensated for each accrued DAS, or part thereof, that they carry an observer. This does not include transiting time outside of DAS.

Example activity chart

| | Monday | Tuesday | Wednesday | Thursday | Friday | Totals |
|---|--------------------------|----------|-----------|----------|-------------------------|--------------------|
| Activity | DAS clock starts 7:00 PM | Fishing | Fishing | Fishing | DAS clock stops 5:00 AM | - |
| Payment required from vessel | * | \$719.12 | \$719.12 | \$719.12 | * | \$ 2,157.36 |
| DAS accrued | 0.21 | 1 | 1 | 1 | 0.21 | 3.42 |
| COMPENSATION - Additional scallops landed | 400 lbs | 400 lbs | 400 lbs | 400 lbs | 400 lbs | 2,000 lbs |

* No payment is required from the vessel because the observer was onboard less than 6 hours on Monday and on Friday. If the observer was onboard for 6 hours or more, (i.e., the trip began at 6:00 PM on Monday), an additional payment of \$719.12 would be required.

Compensation for Access Area Trips Terminated Early ("Broken Trips") – Effective **July 23, 2004**

A vessel owner or operator may terminate an Access Area trip at any time for any reason he/she deems necessary. If the amount of scallops landed by the vessel is less than the possession limit specified for the Access Area (18,000 lb for Hudson Canyon Access Area), the Regional Administrator will authorize a makeup trip. The DAS to be charged and the possession limit for the additional trip will be calculated as shown in the table below. Any broken trip will result in a minimum DAS charge of 2 DAS, even if no scallops are landed from the trip, unless the trip is terminated prior to entering the Access Area. In that case, the vessel will be charged only actual DAS.

Notification that a vessel intends to end a trip must be provided via VMS prior to leaving the Access Area. The owner/operator must also submit a form that provides specific information about the broken trip. A vessel that is allocated more than one makeup trip may combine those trips into one Access Area trip, provided that all terminated trips occurred in the same Access Area and the possession limit resulting from the combined compensation trips does not exceed the total possession limit specified for the Access Area (18,000 lb for Hudson Canyon Access Area).

Broken trip forms are available upon request from the Northeast Regional Office of NOAA Fisheries.

Hudson Canyon Access Area "Broken Trip" Compensation Chart

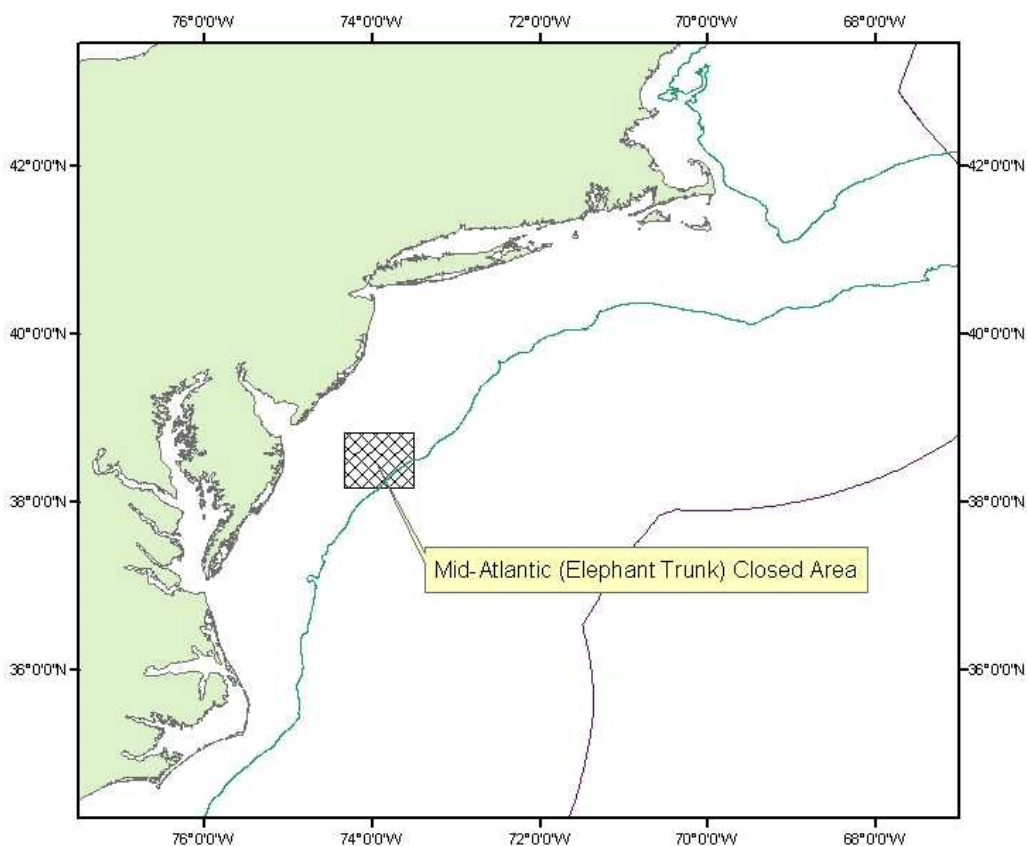
| Proportion of Scallop Landings to Scallop Possession Limit for Broken Trip | Hail Weight of Sea Scallops (meat weight, pounds) | DAS charge | Compensation Trip Allowance |
|--|---|------------|-----------------------------|
| 0 percent | Zero | 2 | 10 DAS and 15,000 lb |
| 1 to 10 percent | 1 to 1,800 | 3 | 9 DAS and 13,500 lb |
| 11 to 20 percent | 1,801 to 3,600 | 4 | 8 DAS and 12,000 lb |

| | | | |
|----------------------|------------------|----|---------------------|
| 21 to 30 percent | 3,601 to 5,400 | 5 | 7 DAS and 10,500 lb |
| 31 to 40 percent | 5,401 to 7,200 | 6 | 6 DAS and 9,000 lb |
| 41 to 50 percent | 7,201 to 9,000 | 7 | 5 DAS and 7,500 lb |
| 51 to 60 percent | 9,001 to 10,800 | 8 | 4 DAS and 6,000 lb |
| 61 to 70 percent | 10,801 to 12,600 | 9 | 3 DAS and 4,500 lb |
| 71 to 80 percent | 12,601 to 14,400 | 10 | 2 DAS and 3,000 lb |
| More than 80 percent | Over 14,400 | 11 | 1 DAS and 1,500 lb |

MID-ATLANTIC (ELEPHANT TRUNK) CLOSED AREA - Effective July 23, 2004 Through February 28, 2007.

The area shown on the chart below is established as a Rotational Closed Area. During the closure period, which extends through February 28, 2007, no vessel may fish for, possess or land sea scallops in or from the area. No vessel possessing sea scallops may enter or be in the area unless it is in transit with all gear stowed as specified in §648.23(b) or there is a compelling safety reason to enter the area.

| Point | Latitude | Longitude |
|-------|----------------------|----------------------|
| ET1 | 38 50 ° N | 74 20 ° W |
| ET2 | 38 10 ° N | 74 20 ° W |
| ET3 | 38 10 ° N | 73 30 ° W |
| ET4 | 38 50 ° N | 73 30 ° W |
| ET1 | 38 50 ° N | 74 20 ° W |



GENERAL CATEGORY VESSELS AND LIMITED ACCESS SCALLOP VESSELS NOT FISHING UNDER A SCALLOP DAS

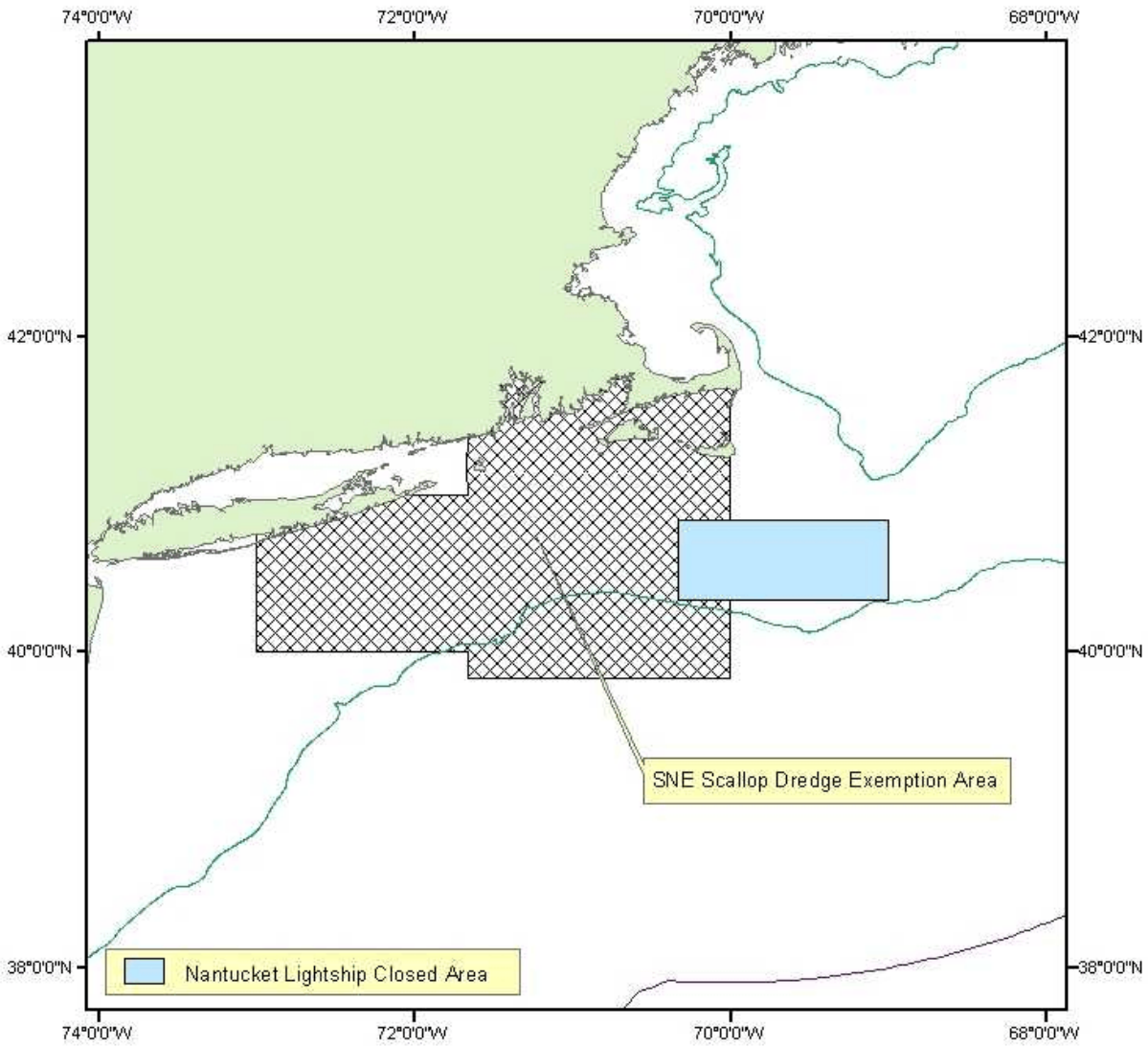
Southern New England (SNE) Scallop Dredge Exempted Fishery

Amendment 13 to the Northeast multispecies FMP, implemented on May 1, 2004, created the SNE Scallop Dredge Exemption Area. Under this program, vessels with General Category scallop permits, vessels with limited access scallop permits that have declared out of the DAS program, or vessels that have used up their scallop DAS, but are not fishing under a multispecies DAS, may fish for scallops in this area under the following conditions:

- ◆ Such vessels may not fish for, possess, or land species other than Atlantic sea scallops.
- ◆ The combined dredge width used by such vessels may not exceed 10.5 ft, measured at the widest point in the bail of the dredge.
- ◆ Scallop dredges must have a twine top mesh size of 10 inches or greater, square or diamond mesh, to minimize bycatch of groundfish, as of July 23, 2004. This is an increase from the current regulations as explained above.
- ◆ Vessels may not fish in the Nantucket Lightship Groundfish Closed Area and the Nantucket Lightship Habitat Closed Area.

SNE Dredge Exemption Area

| <u>Point</u> | <u>Latitude</u> | <u>Longitude</u> |
|--------------|---|------------------|
| Sc1 | South facing shoreline of Long Island, NY | 73° 00' W |
| Sc2 | 40° 00' N | 73° 00' W |
| Sc3 | 40° 00' N | 71° 40' W |
| Sc4 | 39° 50' N | 71° 40' W |
| Sc5 | 39° 50' N | 70° 00' W |
| Sc6 | South facing shoreline of Nantucket, MA | 70° 00' W |
| Sc7 | North facing shoreline of Nantucket, MA | 70° 00' W |
| Sc8 | South facing shoreline of Cape Cod, MA | 70° 00' W |



ESSENTIAL FISH HABITAT (EFH) CLOSURES- Effective July 23, 2004

Amendment 10 designates four Area Closures to protect EFH from adverse effects due to scallop fishing. No vessel may fish for, possess or land sea scallops in or from these areas. These areas are all located within the current year-round groundfish closed areas (Closed Area I, Closed Area II, Nantucket Lightship Closed Area, and Western Gulf of Maine Closed Area) where scallop fishing is currently prohibited by Northeast multispecies regulations.

No vessel possessing sea scallops may enter or be in the area unless it is in transit with all gear stowed as specified in §648.23(b), or there is a compelling safety reason to enter the area. This is true for all of the EFH Area Closures except for the closure located within Closed Area II. No vessel possessing sea scallops may enter or be in that area unless there is a compelling safety reason to enter the area **and** it is in transit with all gear stowed as specified in §648.23(b).

A chart of the EFH Closed Areas is available upon request from the Northeast Regional Office of NOAA Fisheries.

SET-ASIDES FOR DATA COLLECTION AND MONITORING

Amendment 10 maintains or establishes programs to set-aside DAS or target Total Allowable Catch (TAC) to fund data collection and monitoring programs. It maintains the 1% TAC set-aside to defray the cost of carrying an observer in the Hudson Canyon Access Area, as implemented by emergency action on March 1, 2004. It also establishes a 1% DAS set-aside to provide compensation to vessels that carry observers in open areas, specifies that future Access Area Programs will include a 1% TAC set-aside, and establishes a TAC set-aside to fund the Research Set-Aside (RSA) Program.

DAS Set-aside for Open Area Trips

One percent (1%) of the total available DAS will be set aside and distributed to participating vessels as described above.

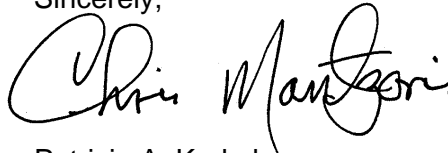
TAC Set-aside for Access Area Trips

One percent (1%) of the total available TAC will be set aside and distributed to participating vessels as described above.

RSA Program

Each year, NOAA Fisheries and the Councils issue a Request for Proposals (RFP) that identifies priorities for sea scallop research projects to be conducted under a RSA Program. Amendment 10 adds a 2% TAC set-aside to fund selected projects in addition to the 2% DAS set-aside that this program already receives.

Sincerely,



for

Patricia A. Kurkul
Regional Administrator

This Small Entity Compliance Guide complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996.